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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the	)	
Subscriber Changes Provisions	)	
of the Telecommunications Act	)	
of 1996	)	**CC Docket No. 94-129**
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	
	)	

OPPOSITION OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to Public Notice (Report No. 2332) dated June 1, 1999 and published in the Federal Register on June 8, 1999, 64 F.R. 30520, hereby respectfully submits its Opposition to the Petitions filed by various parties seeking reconsideration or clarification of the *Second Report and Order*, 14 FCC Rcd 1508 (1998) ("*Second Report*") in the above-captioned proceeding. Specifically, Sprint opposes (1) the petitions filed by the National Telephone Cooperative Association (NTCA) and coalition of rural LECs (Rural LECs) requesting that the Commission reconsider its decision prohibiting executing carriers from verifying preferred carrier (PC) change requests received from IXCs before they execute such changes; (2) the petitions filed by the National Association of State Utility Consumer Advocates (NASUCA), the New York State Consumer Protection Board (NYSCPB) and NTCA requesting that the Commission reconsider its decision to limit the absolution period for consumers claiming to have been slammed to 30 days; and (3) the petition filed by AT&T to the extent that AT&T requests that the Commission reconsider its decision to limit the requirement for

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verification to consumers' changes in their PCs, thereby excluding verification of the initial selections by consumers of such carriers. Sprint also addresses the plethora of clarification requests by SBC.

I. CONTRARY TO THE CLAIMS OF THE NTCA AND THE RURAL LECS, THE COMMISSION'S DECISION TO BAR LECS FROM RE-VERIFYING CARRIER CHANGE ORDERS SUBMITTED BY IXCS IS FULLY JUSTIFIED AND SHOULD NOT BE RECONSIDERED.

The Commission correctly concluded that "executing carriers should not verify carrier changes prior to executing the change." *Second Report* at 1567 (¶98). Not only would "requiring such verification...be expensive, unnecessary, and duplicative of the submitting carrier's verification," *id.*, but perhaps more importantly it "could have anticompetitive effects" since "executing carriers would have both the incentive and ability to delay or deny carrier changes, using verification as an excuse, in order to benefit themselves or their affiliates." *Id.* at 1568 (¶99). Moreover, any executing carrier that used the customer information provided by an submitting carrier to re-verify a carrier change would violate its duty under Section 222(b) of the Act to use such carrier proprietary information only for the provision of telecommunications services. *Id.* And, re-verification by an executing carrier would amount to "a *de facto* carrier freeze even in situations in which the subscriber has not requested such a freeze." *Id.* at 1568 (¶100). Although NTCA and the Rural LECs challenge the Commission's conclusions and the bases for such conclusions, they have not raised any new arguments or presented any credible new evidence that would cause the Commission to reconsider its decision here. In any case, their arguments are totally without merit.

For example, NTCA disputes the Commission's conclusion that allowing executing carriers -- especially the smaller LECs in rural America -- to verify carrier change requests from submitting carriers could have anticompetitive effects as unsupported supposition. Petition at 17

and 21. What is unsupported, however, is the notion implicit in NTCA's argument here that the laws of economics do not apply to small LECs in rural America and that they could not or would not exploit their gatekeeper status to their own advantage.

NTCA appears to concede that a rural LEC with an IXC affiliate may have an incentive to disadvantage submitting carriers since it makes the point of arguing that such incentive "has no application whatsoever to the large percentage of rural LECs which have no IXC operations...." Petition at 18; *see* also Petition of Rural LECs at 6 fn. 5 ("Many Rural LECs implementing verification do not have long distance affiliates"). But, NTCA does not inform the Commission how many of this "large percentage" of rural LECs without IXC affiliates incur the added expense of re-verifying PC changes of a submitting carriers. In fact, based upon the "evidence" showing the rates of PC change requests by IXCs that have been rejected by the Rural LECs, it would appear that relatively few rural LECs without IXC affiliates re-verify such requests. Of the six carriers presenting such information (*see* Rural LECs Petition at 4-5), only one is identified as not being affiliated with an IXC. Petition at 5, fn. 4.[1]

Of course, the evidence furnished by the Rural LECs hardly supports a claim that slamming is much more of a problem in rural American than in the rest of the country. The Rural LECs allege that they "typically experience 40 to 50% subscriber rejection of change requests submitted by IXCs." *Id.* at 4. However, the LECs reject PC change requests of IXCs for a variety of reasons, *e.g.,* the name given by the IXC does not exactly match the name on the

[1] There are any number of reasons why even a rural LEC that does not have an IXC affiliate may nonetheless attempt to dissuade a customer from switching from one IXC to another. For example, it may have a billing and collection agreement with the customer's current carrier but not with the one requesting the change. Thus, by making the change, it will diminish the profits it realizes from such billing and collection agreement with the incumbent carrier. Also, it may not wish to make the change in its switch because of a belief that the PC change charge does not cover its costs.

account, the customer's address does not match the address in the LEC's database, the customer's account has been disconnected by the LEC. Thus, the rejection rate data presented by the Rural LECs does not present an accurate measure of slamming in rural America.[2]

Another reason for viewing the evidence presented by the Rural LECs with skepticism is the fact that the only IXCs identified by Rural LECs as causing such "massive slamming" are AT&T, MCI and Sprint. Yet, these three carriers have the lowest rate of slamming complaints lodged against them as measured by the Commission. For example, for the period January 1 through June 30, 1998, the Commission received 595 complaints accusing Sprint of slamming. This equated to 0.1 complaints per one million dollars in revenue. (Source: The FCC Telephone Consumer Complaint Scorecard, December 1998 at 6). Moreover, the real culprits, if any, in many, and perhaps most, of the complaints in which Sprint was accused of slamming were resale carriers for which Sprint provided the underlying facilities. Sprint simply does not deliberately seek to convert customers to its service without proper authorization regardless of whether such customers live in urban, suburban or rural America. To contend otherwise, as NTCA and the Rural LECs do, defies credulity.

The argument of NTCA and the Rural LECs that rural LECs, unlike other dominant firms companies with market power, have no incentive to exploit their market power to their own

[2] If the script used by the Rural LECs to re-verify PC change requests by the IXCs contains information that is contrary to what the consumer was told by the IXC, the consumer may claim that he/she has been slammed. For instance, the IXC may have assured the consumer that the IXC would pay for any charges imposed by the consumer's LEC for changing carriers through a credit on the consumer's first bill. However, the LEC may tell the consumer that he/she will be responsible for paying the change charge. *See* NTCA Petition at 25. The consumer may not remember the fact that he/she will be reimbursed for such charges by the IXC -- and it could be several days before the LEC contacts the consumer for re-verification -- and therefore deny that he/she wanted to switch carriers. Also, the member of the household that the LEC reaches to re-verify the PC change request may be different than the one contacted by the IXC; may not have been informed of the fact that the another member of the household had agreed to the switch; and, consequently, is likely to deny that the switch was authorized. In short, a LEC seeking to re-verify a PC change request may itself be the "cause" of the alleged slam.

advantage is furthered undermined by their suggestion that the Commission could impose "limited regulatory safeguards against anticompetitive behavior," including "specifically prohibiting executing carriers from marketing their company's (including affiliate's) services in connection with verification of a carrier change request." NTCA Petition at 23; see also Rural LECs Petition at 8 fn. 7. Section 222(a) of the Act already imposes a duty upon every carrier "to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers..." and Section 222(b) already prohibits a carrier from using the proprietary information it receives from another carrier in order to furnish telecommunications service from using such information for its own marketing efforts.[3] The notion that the Commission must now impose a "regulatory safeguard" to prohibit such anticompetitive behavior suggests that the rural LECs that had re-verified the PC change requests submitted by IXCs used the occasion to market their own services or those of their affiliates. Indeed, the usually high PC rejection rates reported by the rural LECs may be due, in part, to such marketing efforts. And, because it is likely that the employees of a small rural LEC that would re-verify a consumer's choice of a IXC -- the rural LECs do not propose to have an independent third party conduct the re-verification and they may not be big enough to justify employing a separate staff to conduct re-verification -- would also be responsible for marketing the LEC (or their affiliate's) services to customers as well as assuring that the LEC's profit centers, *e.g.*, billing and collection,

[3] NTCA appears to claim that the names, addresses and telephone numbers of the customers of an IXC is not proprietary information subject to the prohibitions of Sections 222(a) and (b). Petition at 9-11. This claim is without merit. There can be no question that a carrier's customer base is proprietary information. Each carrier jealously guards the identities of its customers and will not release such information unless compelled to do so by a court or other authority and only then under appropriate guarantees that such information will not be used for marketing purposes.

are maintained, there is no way that a regulatory safeguard can prevent rural LECs from using re-verification as an opportunity to dissuade a customer from switching IXCs.

For these reasons, the Petitions for Reconsideration of NTCA and the Rural LECs should be denied.

II. AN INCREASE IN THE PERIOD OF TIME CUSTOMERS CLAIMING TO HAVE BEEN SLAMMED ARE ABSOLVED FROM PAYING FOR THE TELECOMMUNICATIONS SERVICES RECEIVED IS NOT JUSTIFIED.

The Commission should also deny the Petitions of those parties seeking to have the Commission increase the absolution period for customers claiming to have been slammed. See Petition of NASUCA at (suggesting that the absolution period be extended for up to two years); Petition of NYSCPB (suggesting that the absolution period be extended for thirty days after the customer receives the first bill that include the charges from the slamming carrier); and Petition of NTCA (same as the NYSCPB). As Sprint and other Petitioners have explained, the Commission's 30-day absolution finding is *ultra vires* and should be rescinded. Petition of Sprint at 5-10; Petition of AT&T at 2-6; Petition of Frontier at 3-9. Plainly, any extension of the absolution period runs afoul of the Act.

The arguments of NASUCA for a two-year absolution period are particularly flawed. For example, it claims that the procedures set forth in Section 258(b) apply only in those relatively few cases where the customer pays the slamming carrier directly. According to NASUCA, this section does not apply to instances where the slamming carriers bill through the LECs because "the LECs purchase the accounts receivable of the IXCs they bill for..." and the slammed consumer is actually paying the LEC. Petition at 5. This argument is totally without merit. Regardless of whether the LECs billing and collection arrangements with the IXCs amount to the actual purchase of accounts receivable as that term is generally understood -- and increasingly

under such agreements the LECs are insisting upon terms that enable them to recourse any long distance charges that they are unable to collect from a customer back to the customer's IXCs, thereby significantly reducing the LECs' risk under such contracts -- the fact is that the LECs are billing on behalf of their IXC customers and not themselves; the IXCs are specifically identified on the LECs' bill; and customers understand that they are paying their long distance charges through the LECs. That the LECs may have already paid the IXCs and therefore do not actually remit the payments received from customers to the IXCs is of no legal consequence for purposes of applying Section 258 and is otherwise irrelevant.

NASUCA also claims that consumers will have no incentive to report that they have been slammed in order to receive free service. Petition at 7 (questioning whether "such dishonesty" on the part of consumers is "likely or even possible"). NASUCA's assumption here that consumers will not fraudulently assert that they have been slammed in order to avoid paying the charges incurred has no basis in reality. Most, if not all, carriers devote considerable resources to fraud prevention because various individuals routinely seek to use the carriers' networks without paying for such use. The FCC's absolution scheme now gives these individuals another avenue for obtaining free service. The notion that only those consumers who were actually slammed will be the only ones to report such slams is simply naïve.[4]

[4] It is not anti-consumer to require individuals who may have been slammed to pay for the calls they made over the slamming carriers' networks at the rates they would have paid to their preferred carriers. Indeed, this was the Commission policy prior to the enactment of Section 258 and nowhere in Section 258 or its legislative history does Congress give any indication that it disagreed with such policy. *See* Sprint's Petition at 8.

III. THE COMMISSION SHOULD REJECT AT&T'S REQUEST THAT THE COMMISSION'S VERIFICATION RULES BE APPLIED TO NEW CARRIER SELECTIONS.

AT&T argues that the Commission should also apply the requirements of the *Second Report* to initial carrier selections. AT&T claims that "[i]n our highly mobile society, millions of new subscriber lines are installed annually as consumers move their residences and as business customers relocate or expand their locations"; that "the potential for LEC abuse in a carrier selection through a transaction directly between a customer and a LEC is just as serious in an initial carrier selection for a newly-ordered presubscribed line as where the customer wishes to change an existing carrier choice"; and that such new customers should not be deprived of the valuable consumer protections adopted in the *Second Report*. AT&T Petition at 24-25. The Commission's verification rules are designed to prevent slamming -- a change in a customer's preferred carrier without the customer's authorization. As a logical matter, a customer that is installing new service or adding new lines to its existing service cannot be slammed. Sprint agrees that the LECs' gatekeeper control of entire carrier selection process has the potential for abuse, especially when the RBOCs gain in-region interLATA authority. However, the solution to such potential abuse is not to apply the rules designed to deal with slamming to initial carrier selections but rather to remove the gatekeeper control from the LECs and establish an independent third party administrator for the entire PC process. AT&T's proposal here should be rejected.

IV. THE PLETHORA OF CLARIFICATIONS REQUESTED BY SBC DEMONSTRATES THAT THE COMMISSION'S LIABILITY SCHEME IS FLAWED.

SBC argues that the Commission's liability scheme needs to clarified in a number of respects. For the most part, SBC does not suggest how the Commission should clarify its rules. SBC appear to content simply to raise the need for such clarification.

Sprint believes that SBC's petition clearly shows that the Commission's liability scheme is flawed and should be scrapped. In its place, Sprint recommends that the Commission adopt the Third Party Administrator (TPA) process proposed by a most of the IXCs and supported by many consumer groups (albeit with some modifications) and require all members of the industry subject to the FCC's *Second Report* to abide by such process. Making the TPA mandatory will provide consumers with the type of relief envisioned by Commission in the *Second Report.*

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June 23, 1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSITION OF SPRINT CORPORATION** was sent by hand or by United States first-class mail, postage prepaid, on this the 23rd day of June, 1999 to the parties on the attached list.

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